

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., by and through her next friend, James D. Johnson; JAMISON J., by and through his next friend, Clara Lewis; DESIREE, RENEE, TYSON, and MONIQUE P., by and through their next friend, Sylvia Forster; JOHN A., by and through his next friend, James D. Johnson; CODY B., by and through his next friend, Sharon Scott; MARY, TOM, MATTHEW, and DANA W., by and through their next friend, Zelatra W.; AND SAM H., by and through his next friend, Yvette Bullock; on their own behalf and behalf of all others similarly situated,

Plaintiffs,

CIVIL ACTION NO.
3:04-CV-251-TSL-FKB

v.

PHIL BRYANT, as Governor of the State of Mississippi; DONALD TAYLOR, as Executive Director of the Department of Human Services; AND BILLY MANGOLD, as Director of the Division of Family and Children's Services,

Defendants.

**AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO AMEND PENDING
AMENDED MOTION FOR RELIEF PURSUANT TO REMEDY PHASE OF
PLAINTIFFS' RENEWED MOTION FOR CONTEMPT, FOR AN EVIDENTIARY
HEARING, AND FOR THE APPOINTMENT OF A RECEIVER**

I, MARCIA ROBINSON LOWRY, ESQ., being duly sworn, on oath depose and say:

1. I am the Executive Director of A Better Childhood, Inc. and represent Plaintiffs in the above-captioned matter. I submit this Affidavit in Support of Plaintiffs' Motion for Leave to Amend Pending Amended Motion for Relief Pursuant to Remedy Phase of Plaintiffs' Renewed Motion for Contempt, for an Evidentiary Hearing and for the Appointment of a Receiver.

2. Plaintiffs brought their Renewed Motion for Contempt [Dkt. 739] on May 31, 2018, pursuant to Federal Rule of Civil Procedure 70(e), the Stipulated Third Remedial Order [Dkt. 713] (“STRO”), and the 2nd Modified Mississippi Settlement Agreement and Reform Plan [Dkt. 712] (“2nd MSA”).
3. On June 11, 2019, Public Catalyst issued the Progress of the Mississippi Department of Child Protection Services: Monitoring Report for *Olivia Y., et al. v. Bryant, et al.* covering January to December 2018 [Dkt. 845] (the “Monitor’s 2018 Report”) in accordance with § 9.5 of the 2nd MSA.
4. Plaintiffs filed their Amended Motion for Relief Pursuant to Remedy Phase of Plaintiffs’ Renewed Motion for Contempt, for an Evidentiary Hearing and for the Appointment of a Receiver [Dkt. 849] (“Amended Renewed Motion”) on July 3, 2019, pursuant to Federal Rule of Civil Procedure 70(e), the Stipulated Third Remedial Order [Dkt. 713] (“STRO”), and the 2nd Modified Mississippi Settlement Agreement and Reform Plan [Dkt. 712] (“2nd MSA”).
5. On December 23, 2019, Public Catalyst issued the Progress of the Mississippi Department of Child Protection Services: Interim Monitoring Report for *Olivia Y., et al. v. Bryant, et al.* covering January to June 2019 [Dkt. 897] (the “Interim Report”).
6. On December 27, 2019, Plaintiffs filed their Motion for Leave to Supplement Pending Amended Motion for Relief Pursuant to Remedy Phase of Plaintiffs’ Amended Motion for Contempt, for an Evidentiary Hearing and for the Appointment of a Receiver [Dkt. 876], which is currently pending before the Court.

7. On June 26, 2020, Public Catalyst issued the Progress of the Mississippi Department of Child Protection Services: Monitoring Report for *Olivia Y., et al. v. Bryant, et al.* covering January to December 2019 [Dkt. 897] (the “Monitor’s 2019 Report”).
8. According to the Monitor’s 2019 Report, Defendants are *not* in compliance with the following provisions of the 2nd MSA:

- Caseworker Caseloads – § 1.3.a
- Supervisor Staffing Ratios – § 1.3.b
- Comprehensive Information Systems – § 1.5.a
- Responding to Reports of Abuse and Neglect – § 2.1
- Special Investigations Unit and Maltreatment in Care Investigation Initiation Timeliness – § 2.2
- Maltreatment in Care Screen-Out Reviews – § 2.3
- Licensure Investigations Upon Substantiated MIC Report – § 2.4
- Licensure Investigations by Child Placing Agencies – § 2.5
- Maltreatment in Care Investigation Reviews – § 2.7
- Standardized Decision Making – § 2.8
- Maltreatment Investigations of Foster or Adoptive Homes – § 2.8.c
- Maltreatment Investigations of Agency Group Homes, Emergency Shelters, Private Child Placing Agency Homes, or MDCPS Licensed Facilities – § 2.8.d
- Maltreatment of Children in Care – § 2.9
- Timely Licensure of Foster Homes and Facilities – § 3.1
- Unlicensed Foster Homes and Facilities – § 3.2.a
- Unlicensed Foster Homes and Facilities, Safety Issues – § 3.2.b
- Unlicensed Foster Homes and Facilities, Non-Safety Issues – § 3.2.c
- Young Children Placed in Congregate Care Facilities – § 4.9
- Placement Moves – § 4.10
- Placement Moves – § 4.12
- Emergency and Temporary Placements – § 4.11
- Caseworker Contact with Foster Children – § 5.1.a.2

- Caseworker Contact with Foster Children in Placement – § 5.1.a.2
- Caseworker Contact with Parents With Reunification Goal – § 5.1.c.2
- Caseworker Contact with Foster Parents – § 5.1.d.2
- Child-Parent Contacts within 72 Hours of Placement – § 5.2.a
- Family Visitation Plans – § 5.2.b
- Parental Visitation Plans – § 5.2.b.1
- Sibling Visitation Plans – § 5.2.b.2
- Comprehensive Family Service Plans – § 6.1.a.2
- Permanency Plans – § 6.1.d.2
- Concurrent Permanency Planning – § 6.2.a.1
- Caseworker Contact With Parents with Reunification Goal (Services) – § 6.3.a.2
- After-care Plans – § 6.3.a.4
- Adoption Specialists and Adoption Plans – § 6.3.b.1.b
- Termination of Parental Rights Referrals – § 6.3.b.2.b
- Another Permanent Planned Living Arrangement (APPLA) – § 6.3.e
- Permanency Plan Reviews – § 6.4.a.2
- Start-up Stipend – § 7.5
- Assist Emancipating Youth Obtain Adequate Living Arrangements – § 7.6
- Assist In Obtaining Educational Records – § 7.8.a
- Assist In Obtaining Social Security Card – § 7.8.b
- Assist In Obtaining Resume – § 7.8.c
- Assist In Obtaining Driver's License/ State ID – § 7.8.d
- Assist In Obtaining Birth Certificate – § 7.8.e
- Assist In Obtaining Previous Placement Information – § 7.8.f
- Assist In Obtaining Citizenship/ Immigration Records – § 7.8.g
- Assist In Obtaining Tribal Eligibility – § 7.8.h
- Assist In Obtaining Parent Death Certificate – § 7.8.i
- Assist In Obtaining Lifebook/ History – § 7.8.j
- Assist In Obtaining Known Relative List – § 7.8.k

- Foster Child Information Provided to Foster Parents/Facility Staff – § 8.1.f.1
- Foster Child Information Provided to Foster Parents/Facility Staff – § 8.1.f.2
- Timely Review of Educational Record & Educational Needs – § 8.2.a
- Reasonable Efforts to Ensure Continuity of Child’s Education – § 8.2.c.1

See Monitor’s 2019 Report at 8-20.

9. According to the Monitor’s 2019 Report, Defendants have failed to provide the Monitor with data regarding the following provisions of the 2nd MSA:

- § 5.2.b.1.a
- § 5.2.b.2.a/ 5.2.b.3/ 5.2.b.4
- § 6.1.b
- § 6.3.a.1.b
- § 6.3.a.3
- § 6.3.a.6
- § 6.3.d.2
- § 8.1.c.2
- § 8.1.d.2
- § 8.1.d.3
- § 8.1.g
- § 8.2.b

See Monitor’s 2019 Report at 8-20.

10. According to the Monitor’s 2019 Report, the Monitor was unable to validate the data provided by Defendants regarding the following provisions of the 2nd MSA:

- § 2.8.b
- § 3.1
- § 4.6/ 4.16.a
- § 4.6/ 4.16.b
- § 4.7/ 4.17.a
- § 4.7/ 4.17.b
- § 5.1.b.2
- § 6.1.c.2
- § 6.3.a.5.b
- § 7.1
- § 7.2
- § 7.3
- § 7.4

- § 8.1.a.1
- § 8.1.a.2
- § 8.1.b.1
- § 8.1.b.2
- § 8.1.e.1
- § 8.1.e.2
- § 8.2.c

See Monitor's 2019 Report at 8-20.

11. The Monitor's 2019 Report establishes demonstrates Defendants' widespread and blatant noncompliance with the terms of the settlement agreement, emphasizing the need for urgent relief. Accordingly, Plaintiffs are willing to withdraw their request for an evidentiary hearing on the motion and instead move to oral argument on Plaintiffs' pending motion for contempt and the appointment of a receiver [Dkt.739, 840], as well as argument on Defendants' pending motion for relief under Rule 60(b) [Dkt. 756].

12. Plaintiffs, therefore, respectfully seek entry of an Order granting Plaintiffs leave to amend their pending Amended Renewed Motion.

Dated: July 1, 2020

/s/ Marcia Robinson Lowry
Marcia Robinson Lowry (pro hac vice)
A Better Childhood, Inc.
355 Lexington Avenue, Floor 16
New York, New York 10017
Telephone (646) 808-7344
Email: mlowry@abetterchildhood.org